FARAD CONTINUATION SHEET.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION No. 2242 OF 2005.

IN

WRIT PETITION No. 1549 OF 1994.

Office Notes,Office Memorandum of Coram apperance,Court's Orders & Directions and Registrar's Order.	Court or Judge's Order.

Ms. V. S. Jagdale i/b. Smt. Geeta Menon, Advocate for the Applicant (original respondent no.1.)

Mr. P. N. Karlekar, Advocate for the Respondents (original petitioners.)

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:14TH DECEMBER,2006.

1. Heard.

2. This is an application for setting aside the ex-parte judgment dated 7th July, 2005 passed in Writ Petition No. 1549 of 1994. The only ground which has been disclosed in the application filed on behalf of the original respondent no.1 for setting aside the ex-parte judgment is that the

respondent's Advocate was not keeping well on 7th July, 2005 and was down with high temperature and, therefore, could not attend the Court. The application is neither affirmed by the applicant nor by the Advocate. Infact, the application is filed by the Advocate for the parties. Undoubtedly, such an application is maintainable in terms of Order III Rule 4 of the Code of Civil Procedure. However, the application should disclose sufficient cause for the absence of the Advocate on the date when the matter was heard and disposed of ex-parte.

3. Undisputedly, in application there is statement to the effect that the Advocate for respondent no.1 was not keeping well and was down with high temperature on the relevant date. But the said statement is neither corroborated by any affidavit, either of the party or of the Advocate, nor there is any medical certificate in support of alleged sickness of the Advocate for respondent no.1. The judgment which has

been passed ex-parte cannot be set aside, as a matter of course, and without sufficient cause being disclosed by the concerned party for the absence of either of the Advocate or the party itself on the relevant date. As in the case in hand, apart from mere ground about sickness of the Advocate, there is no material on record to hold that infact the Advocate was sick and on that ground was unable to appear in the Court on 7th July, 2005. No sufficient cause is shown for the absence of the Advocate and, therefore, question of setting aside ex-parte judgment dated 7th July, 2005 does not arise. Hence the application is dismissed.

[R.M.S.KHANDEPARKAR,J.]